

OAL CHECKLIST FOR REGULAR APA RULEMAKING

OAL File No. ____ - ____ - ____ Agency: _____
 Reviewer: _____ (All citations are to the Government Code, unless otherwise specified. CCR means California Code of Regulations.)

REQUIREMENT	OK?	PROBLEMS
FORM 400		
Name of agency set out in AGENCY box?		
Subject/topic described in SUBJECT or TOPIC box?		
Rulemaking action submitted within 1 year of publication date of notice? (11346.4(b))		
All SECTIONS AFFECTED and TITLES listed?		
TYPE OF FILING correctly indicated?		
RESUBMITTAL FILING ONLY: Previously disapproved reg. resubmitted within 120 days of agency's receipt of decision of disapproval? Or, extension granted by Director for good cause? (11349.4) Otherwise, within 1 year of publication date of notice? (11346.4(b)) Resubmittal must: Identify prior file by date of submission? Specify parts of prior file incorporated into the resubmittal or submit copy of prior file if returned? (11349.4(c); 1 CCR 84)		
CERTIFICATE OF COMPLIANCE FILING ONLY: <ul style="list-style-type: none"> Submitted to OAL within 120 days of effective date of emergency regulations? (11346.1(e)) Or, special statute for more or less time? B.3 on Form 400 marked, or appropriate certification in file? (11346.1(e)) 		
EFFECTIVE DATE designated? If early effective date requested, good cause shown? (11343.4(d))		
Notice to, or review, consultation, approval, or concurrence by another agency required?		
Name of CONTACT PERSON and TELEPHONE #?		
SIGNATURE by agency head or person listed in a signed delegation order in rulemaking file or on file with OAL? Dated? Typed name/title? (11343(f), 1 CCR 6)		

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REGULATION TEXT	
<p>Final regulation text attached to original and six copies of Form 400? (11343, 1 CCR 6)</p> <ul style="list-style-type: none"> • Documents incorporated by reference attached to original for filing with Secretary of State? (Six duplicate copies of document incorporated by reference <i>not required</i> for formal publication reasonably available from commonly known or identified source.) (1 CCR 20(d)) • Regulation section number(s) fit into CCR? • Underlying text (and Authority and Reference cites) match what is printed in CCR? • Final text show changes to CCR in underline/ strikeout format? (1 CCR 8) 	
NOTICE OF PROPOSED RULEMAKING	
<p>Time, place, nature of proceeding? (11346.5(a)(1))</p> <ul style="list-style-type: none"> • If no hearing scheduled, info on opportunity to request one included? (11346.5(a)(16)) • Request included in file? (11346.8(a); 11347.3(a)(6)) • If hearing timely requested, notice mailed to the extent practicable? (11346.8(a)) 	
<p>Date written comment period closes?</p> <p>At least 45 days (or other time period specified by statute) between publication date and hearing/close of written comment period? (11346.4(a) & 11346.5(a)(14))</p>	
Authority and Reference citations? (11346.5(a)(2))	
INFORMATIVE DIGEST	
<p>Directly related existing laws and regulations and effect of proposed regulations concisely and clearly summarized?</p> <p>In Legislative Counsel digest format? (11346.5(a)(3))</p>	
<p>Significant difference from existing, comparable federal reg. or statute described? Citation to federal regulation or statute included? (11346.5(a)(3))</p>	
<p>Document incorporated by reference into the regulation listed by title and date? (1 CCR 20(c)(3))</p>	

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<p>Will reg. <i>affect</i> small business? (1 CCR 4(a))</p> <ul style="list-style-type: none"> • If regulation <i>does not affect</i> small business, explanation of reason for finding? (1 CCR 4(c)) • If regulation <i>does affect</i> small business: Concise <i>plain English</i> policy statement overview included? Specific objectives, if appropriate, included? (May be in informative digest.) (11346.5(a)(3)(B)) Statement included? (1 CCR (4)(b)(1)) <p><i>The express terms of proposed action written in plain English are available from the agency contact person named in this notice.</i></p> <p style="text-align: center;">OR</p> <p><i>[The rulemaking agency] has determined that it is not feasible to draft the regulation in plain English due to the technical nature of the regulation. However, a noncontrolling plain English summary of the regulation is available from the agency contact person.</i></p> <ul style="list-style-type: none"> • Noncontrolling plain English summary included in rulemaking file? 	
Other statutory requirements - specific agency/type of regulation? (11346.5(a)(4))	
Local mandate determination (policy or expenditure) included? (11346.5(a)(5)) If "yes," does mandate require reimbursement?	
<p>FISCAL IMPACT (11346.5(a)(6))</p> <ul style="list-style-type: none"> • Cost to any local agency or school district for which 17500-17630 require reimbursement? • Other non-discretionary cost or savings imposed upon local agencies? • Cost or saving to any state agency? • Cost or savings in federal funding to the state? 	
HOUSING COSTS: Statement re significant effect on housing costs, if determined? (11346.5(a)(11))	

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<p>SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS/individuals assessed? (11346.3(a))</p> <ul style="list-style-type: none"> • If proposal <i>will not have</i> a significant adverse economic impact, does notice state that? • Initial statement of reasons must include evidence relied upon for <i>will not have</i> statement? See p. 5, line 38. • If proposal <i>may have</i> a significant adverse economic impact, does notice: <p>ID types of businesses affected? (11346.5(a)(7)(A))</p> <p>Describe projected compliance requirements? (11346.5(a)(7)(B))</p> <p>Solicit proposed alternatives using boilerplate at 11346.5(a)(7)(C)?</p> <ul style="list-style-type: none"> • ASSESSMENT STATEMENT: Statement of results of assessment re creation/elimination of CA jobs, creation new, elimination/expansion of existing business within California included? (11346.3(b), 11346.5(a)(10)) <p>OAL must return regulation if assessments have not been done. (11349.1(d)(2))</p>	
<p>STATEMENT OF COSTS: statement of costs necessarily incurred in reasonable compliance, or cost insignificant statement, or cost not considered statement included? (11346.5(a)(9))</p>	
<p>Statement that a least burdensome alternative determination must be made? (11346.5(a)(12))</p>	
<p>Agency contact person and phone # ? (11346.5(a)(13))</p>	
<p>Statement re availability of express terms? (11346.5(a)(15) and (b); 11346.2(a))</p>	
<p>Statement that an initial statement of reasons is prepared and available? (11346.5(a)(15))</p>	
<p>Statement re availability of and location of information upon which proposal is based (rulemaking file)? (11346.5(a)(15); 11346.5(b))</p>	
<p>Statement re 15-day availability of substantial changes to the original proposal? (11346.5(a)(17))</p>	

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<p>STATEMENT RE MAILING OF 45 DAY NOTICE Included? Adequate? (11346.4(a)(1)-(4); 1 CCR 86))</p>	
<p>TEXT OF REGULATIONS as originally proposed</p>	
<ul style="list-style-type: none"> • Included in file? (11347.3(b)(10)) • Underlying text, if any, matches existing reg. text printed in the CCR? (11346.2(a)(3)) • Specific, accurate, and complete Authority and Reference citations provided for each regulation? (11346.2(a)(2)) • All proposed changes to the CCR in underline/italic, strikeout format? (11346.2(a)(3)) 	
<p>INITIAL STATEMENT OF REASONS</p>	
<p>Included in rulemaking file? (11347.3(b)(2)) ISR contents.</p> <ul style="list-style-type: none"> • Public problem, administrative requirement, condition or circumstance? (11346.2(b)(1)) • Specific purpose of proposed regulation? (11346.2(b)(2)) • Rationale/reasonable necessity for proposed regulation, including reasons for mandating specific actions or procedures or specific technologies or equipment? (11346.2(b)(2)) • Each regulation provision covered? (1 CCR 10(b)) • Each study, report, document relied upon, if any, identified? (11346.2(b)(3)) • A description of alternatives to the reg. that were considered, if any, and reasons for rejecting them? (11346.2(b)(4)(A)) 	
<ul style="list-style-type: none"> • If specific actions, procedures, technologies, or equipment prescribed, does ISR demonstrate use of a performance standard was considered? (11346.2(b)(4)(A); 11340.1)) • Description of any alternatives identified to lessen impact on small business? (11346.2(b)(4)(B)) <p>Evidence relied upon to support a finding in the notice that the regulation will not have a significant adverse economic impact on business? (11346.2(b)(5))</p>	

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<ul style="list-style-type: none"> Agency under CalEPA or Resources Agency, or State Fire Marshal: description of efforts to avoid unnecessary duplication or conflict with CFR included? Required finding to adopt reg. different from CFR included? (11346.2(b)(6)) 	
TRANSCRIPT, RECORDING, OR MINUTES	
<ul style="list-style-type: none"> Included in rulemaking file? (11347.3(a)(8)) Transcript or recording verbatim? (1CCR90(b)) Minutes sufficiently detailed to indicate objections and recommendations made? (1 CCR 90(c)) Demonstrate that board or commission with rulemaking authority adopted the regulation(s)? (11347.3(a)(8)) 	
If scheduled public hearing continued or postponed, adequate notice given as to when it would be resumed? (11346.8(b))	
POST-NOTICE MODIFICATIONS TO TEXT	
<p>Differences between originally noticed text and text submitted to OAL? (11346.8(c)) If none, skip rest. All changes <i>nonsubstantial</i> (1 CCR 40) or <i>solely grammatical</i> in nature? (11346.8(c)) If yes, skip rest.</p> <ul style="list-style-type: none"> All <i>substantial</i> changes (1 CCR 40) <i>sufficiently related</i> to original proposal? (11346.8(c); 1 CCR 42)) If no, new 45 day notice required on changes not sufficiently related. (11346.8(c)) If yes, continue. NOTICE OF 15 DAY COMMENT PERIOD <ul style="list-style-type: none"> Included in rulemaking file? State period within which comments will be received? (1 CCR 44(a)) MODIFIED TEXT OF REGULATION <ul style="list-style-type: none"> Included in rulemaking file? (11347.3) Show full text of regulation as originally proposed (1 CCR 44) with proposed changes clearly indicated? (1 CCR 46) 	

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<p>STATEMENT OF MAILING</p> <ul style="list-style-type: none"> • Included in rulemaking file? • Confirm that agency complied with 1 CCR 44(b): <ul style="list-style-type: none"> • State date notice and modified text mailed? • State notice <i>and</i> text mailed to those listed in 1 CCR 44(a)? • State beginning and ending date of public availability? (1 CCR 44(b)) • If no persons to mail to, statement to confirm this and state beginning and ending dates of public availability? (1 CCR 44(c) & (d)) 	
<p>UPDATED INFORMATIVE DIGEST</p>	
<ul style="list-style-type: none"> • Included in rulemaking file? • Update of summary of laws and regulations directly related to proposed rulemaking action? • Update of summary of effect of proposed rulemaking action? (11346.9(b)) 	
<p>FISCAL IMPACT</p>	
<ul style="list-style-type: none"> • STD Form 399 <ul style="list-style-type: none"> • Included in rulemaking file? • Properly filled out and signed? • DOF concurrence required? (SAM 6055, 6056) • Computations leading to dollar estimate and supporting data included in rulemaking file? (SAM 6055) (11349.1(d)(1)) 	
<p>If regulation results in reimbursable cost to local agency/school district OAL must disapprove unless information specified in 11349.1(d)(3) re source of funds is included in rulemaking file.</p>	

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FINAL STATEMENT OF REASONS	
<p>Federally mandated regulation? See 11346.2(c).</p> <ul style="list-style-type: none"> • Included in rulemaking file? • Update of information in ISR? (11346.9(a)(1)) • Update of material relied upon by agency? Made available? See page 9, line 21. • Determination whether regs impose mandate upon local agencies/school districts? (11346.9(a)(2)) <ul style="list-style-type: none"> • If "yes," statement whether mandate is reimbursable under 17500-17630? • If "not reimbursable," reason as to why? • Determination, with supporting evidence, that no alternative would be more effective or as effective and less burdensome to affected persons? (11346.9(a)(4)) • If document is incorporated by reference into the final regulation: <ul style="list-style-type: none"> • Was document available upon request from agency, or reasonably available from commonly known or specified source? (1 CCR 20(c)(2)) • Demonstration in FSR that publication of incorporated document in full in CCR would be cumbersome, unduly expensive, or otherwise impractical? (1 CCR 20(c)(1)) • Incorporated document identified in 45 day or 15 day notice? (1 CCR 20(c)(3)) • SUMMARY of each comment received during a comment period specifically directed at proposed regulation changes being made available for comment during that comment period or at procedure followed? (11346.9(a)(3)) • RESPONSE: <ul style="list-style-type: none"> • Explain how proposal amended to accommodate comment? OR • Explain <i>a reason for rejecting comment</i>? Reasons included for rejecting proposed alternatives to lessen impact on small business? 11346.9(a)(5)) 	

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OTHER MATERIAL IN RULEMAKING FILE	
Petition, if any, proposing regulatory change? (11340.7; 11347.3(a)(1))	
<p>Written comments, factual information, studies and reports submitted <i>in connection with</i> the adoption, amendment, or repeal of a regulation. (11347.3(a)(6))</p> <ul style="list-style-type: none"> • Material received during 45 day comment period? • Material received during 15 day comment period(s)? • Material received in connection with proposed rulemaking at other times? (11347.3(a)(6)) 	
If regulation requires a report and applies to business, required finding included in file? (11346.3(c))	
Any other information, statement, report or data which agency is required to consider or prepare included in file? (11347.3(a)(11))	
All material relied upon by the agency included in the rulemaking file? (11347.3(b)(7))	
<p>Was all material relied upon made available for comment? If material relied upon was not identified in ISR, <i>or</i> was not otherwise identified and made available, was material made available for at least 15 days as required by 1 CCR 45?</p> <ul style="list-style-type: none"> • Notice included in rulemaking file? • Notice specifically describe material? • Location? • Statement confirming compliance with notice requirements adequate? See 1 CCR 44. 	
TABLE OF CONTENTS/CERT. OF CLOSURE	
Table of Contents/Index identify each item in rulemaking file? (11347.3(b)(12))	
<p>Affidavit/Declaration under penalty of perjury stating:</p> <ul style="list-style-type: none"> • Rulemaking file is closed and complete? • Date file closed? (11347.3(b)(12)) • Is closure date later than date of all documents in the rulemaking file? 	

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SUBSTANTIVE REQUIREMENTS*	
<p><i>AUTHORITY</i> (11349(b), 11342.2; 1 CCR 14)</p> <ul style="list-style-type: none"> • Citations specific, accurate, complete? • Specific authority to impose fine or imprisonment? (11145) • Regulation alter, amend, or enlarge a statute? (1 CCR 14(c)) <p><i>REFERENCE</i> (11349(e); 1 CCR 14(b))</p> <ul style="list-style-type: none"> • Citations specific, accurate, complete? <p><i>CONSISTENCY</i> (11349(d))</p> <ul style="list-style-type: none"> • Permit Reform Act. (15371-15378) • Public Records Act. (6250-6267) • Information Practices Act. (Civil Code 1798) • Bagley-Keene Open Meeting Act. (11120-11132) • CEQA (Public Resources Code 21000, 21080.5; 14 CCR 15000, 15250, 15307, 15308) • <i>Other applicable statutes or regulations?</i> <p><i>CLARITY</i> (11349(c); 1 CCR 16)</p> <ul style="list-style-type: none"> • Presumed unclear? See 1 CCR 16. • Title of a document (including a form) incorporated by reference clearly set out in the text? Specific identification of the part of the document incorporated, if appropriate? (1 CCR 20(c)(5)) • Statement in text that a document, or part, is incorporated by reference? • Statement in text of revision date (or other specific identifier) of the particular version incorporated? <p><i>EXCEPTION:</i> No date required if authorizing statute requires adoption/ enforcement of incorporated provision and any subsequent amendments. (1 CCR 20(c)(4))</p> <p><i>NONDUPLICATION</i> (11349(f), 11346.2(b)(6); 1 CCR 12)</p> <p><i>NECESSITY</i> (11349(a); 1 CCR 10)</p> <ul style="list-style-type: none"> • All provisions reasonably necessary? (1 CCR 10) • Scientific portions of regulation peer reviewed? (Health & Safety Code 57004) <p>* If incorporated by reference required by statute, no OAL review of the incorporated documents for compliance with 11349.1 (1 CCR 20(b))</p>	

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